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June 25, 2024

VIA E-FILE AND EMAIL

U.S. Magistrate Judge John F. Docherty
United States District Court
316 N. Robert Street
St. Paul, Minnesota 55101
Docherty_chambers@mnd.uscourts.gov

Re: *Smartmatic USA Corp., et al. v. Lindell, et al.*, No. 22-cv-00098

Dear Judge Docherty,

I submit this letter on behalf of Plaintiffs Smartmatic USA Corp., Smartmatic International Holding B.V., and SGO Corporation Limited (collectively “Smartmatic”) to provide the Court with information relevant to arguments put forth during the oral argument proceedings held on June 21, 2024 on Smartmatic’s Motion to Show Cause.

At the June 21, 2024 hearing, counsel for Defendants made the representation that the Google Analytics data Smartmatic has sought—including data from michaeljlindell.com—is (1) not in Defendants’ possession, custody, or control, and (2) equally accessible to all parties. Counsel’s representation is not true. Google Analytics is only available to the owner of the website in question, as setting up data collection requires adding a Google “tag” directly into the website’s source code or a compatible CMS. *See [GA4] Set up Analytics for a website and/or app*, Google, <https://support.google.com/analytics/answer/9304153> (last accessed June 24, 2024) (noting that “[t]o begin seeing data in your new Google Analytics 4 property, you’ll need to do one of the following: . . .”). Smartmatic does not have the ability or right to manipulate the source code of Mr. Lindell’s personal website, therefore it cannot access this information on its own.

Defendants, on the other hand, have the ability to generate reports through Google Analytics, and then export that data into a form they can produce to Smartmatic. *See [GA4] Overview of Google Analytics reports*, Google, <https://support.google.com/analytics/answer/9212670> (last accessed June 24, 2024) (detailing the various kinds of reports available and featuring a screenshot showing that the data can be exported). Defendants do not need to make a request to Google in to order retrieve this data—it is located in Defendants’ Google account and can be retrieved on their own without requiring permission or assistance. *See id.* (“Once Analytics starts to receive data, the data appears in the Realtime report and then in your other reports shortly after.”).

Smartmatic does not contend that counsel for Defendants intentionally misled the Court at the June 21, 2024 hearing. However, after investigating the accuracy of counsel’s representation

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that Defendants' Google Analytics data was already publicly available, Smartmatic understands that Defendants' counsel *was* mistaken. On the contrary, this data is in Defendants' exclusive control. Thus, Smartmatic respectfully requests that the Court consider this information when ruling on Smartmatic's request.

Respectfully submitted,

BENESCH, FRIEDLANDER, COPLAN &
ARONOFF LLP

A handwritten signature in blue ink, appearing to read 'J. Bedell', is positioned above the printed name.

James R. Bedell